§ 20-305.2. Unfair methods of competition.

(a) It is unlawful for any motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, to directly or indirectly through any subsidiary or affiliated entity, own any ownership interest in, operate, or control any motor vehicle dealership in this State, provided that this section shall not be construed to prohibit:

(1) The operation by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, of a dealership for a temporary period (not to exceed one year) during the transition from one owner or operator to another; or

(2) The ownership or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, while in a bona fide relationship with an economically disadvantaged or other independent person, other than a manufacturer, factory branch, distributor, distributor branch, or an agent or affiliate thereof, who has made a bona fide, unencumbered initial investment of at least six percent (6%) of the total sales price that is subject to loss in the dealership and who can reasonably expect to acquire full ownership of the dealership within a reasonable period of time, not to exceed 12 years, and on reasonable terms and conditions; or

(3) The ownership, operation or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, if such manufacturer, factory branch, distributor, distributor branch, or subsidiary has been engaged in the retail sale of motor vehicles through such dealership for a continuous period of three years prior to March 16, 1973, and if the Commissioner determines, after a hearing on the matter at the request of any party, that there is no independent dealer available in the relevant market area to own and operate the franchise in a manner consistent with the public interest; or

(4) The ownership, operation, or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, if the Commissioner determines after a hearing on the matter at the request of any party, that there is no independent dealer available in the relevant market area to own and operate the franchise in a manner consistent with the public interest; or

(5) The ownership, operation, or control of any facility (location) of a new motor vehicle dealer in this State at which the dealer sells only new and used motor vehicles with a gross weight rating of 8,500 pounds or more, provided that both of the following conditions have been met:

a. The facility is located within 35 miles of manufacturing or assembling facilities existing as of January 1, 1999, and is owned or operated by the manufacturer, manufacturing branch, distributor, distributor branch, or any affiliate or subsidiary thereof which assembles, manufactures, or distributes new motor vehicles with a gross weight rating of 8,500 pounds or more by such dealer at said location; and

b. The facility is located in the largest Standard Metropolitan Statistical Area (SMSA) in the State; or

(6) As to any line make of motor vehicle for which there is in aggregate no more than 13 franchised new motor vehicle dealers (locations) licensed and in operation within the State as of January 1, 1999, the ownership, operation, or

control of one or more new motor vehicle dealership trading solely in such line make of vehicle by the manufacturer, factory branch, distributor, distributor branch, or subsidiary or affiliate thereof, provided however, that all of the following conditions are met:

a. The manufacturer, factory branch, distributor, distributor branch, or subsidiary or affiliate thereof does not own directly or indirectly, in aggregate, in excess of forty-five percent (45%) interest in the dealership;

b. At the time the manufacturer, factory branch, distributor, distributor branch, or subsidiary or affiliate thereof first acquires ownership or assumes operation or control with respect to any such dealership, the distance between the dealership thus owned, operated, or controlled and the nearest other new motor vehicle dealership trading in the same line make of vehicle, is no less than 35 miles;

c. All the manufacturer's franchise agreements confer rights on the dealer of the line make to develop and operate within a defined geographic territory or area, as many dealership facilities as the dealer and manufacturer shall agree are appropriate; and

d. That as of July 1, 1999, not fewer than half of the dealers of the line make within the State own and operate two or more dealership facilities in the geographic territory or area covered by the franchise agreement with the manufacturer.

(7) The ownership, operation, or control of a dealership that sells primarily recreational vehicles as defined in G.S. 20-4.01 by a manufacturer, factory branch, distributor, or distributor branch, or subsidiary thereof, if the manufacturer, factory branch, distributor, or distributor branch, or subsidiary thereof, owned, operated, or controlled the dealership as of October 1, 2001.

(b) Subsection (a) of this section does not apply to manufacturers or distributors of trailers or semitrailers that are not recreational vehicles as defined in G.S. 20-4.01.

(c) For purposes of subsection (d) of this section, the following definitions apply:

(1) Former Franchisee. – A new motor vehicle dealer, as defined in G.S. 20-286(13), that has entered into a franchise, as defined in G.S. 20-286(8a) with a predecessor manufacturer and that has either:

a. Entered into a termination agreement or deferred termination agreement with a predecessor or successor manufacturer related to such franchise; or

b. Has had such franchise canceled, terminated, nonrenewed, noncontinued, rejected, nonassumed, or otherwise ended.

(2) Relevant market area. – The area within a 10-, 15-, or 20-mile radius around the site of the previous franchisee's dealership facility, as determined in the same manner that the relevant market area is determined under G.S. 20-286(13b) when a manufacturer is seeking to establish an additional new motor vehicle dealer.

(3) Successor manufacturer. – Any motor vehicle manufacturer, as defined in G.S. 20-286(8e), that, on or after January 1, 2009, acquires, succeeds to, or assumes any part of the business of another manufacturer, referred to as the "predecessor manufacturer," as the result of any of the following:

a. A change in ownership, operation, or control of the predecessor manufacturer by sale or transfer of assets, corporate stock or other

equity interest, assignment, merger, consolidation, combination, joint venture, redemption, court-approved sale, operation of law or otherwise.

b. The termination, suspension, or cessation of a part or all of the business operations of the predecessor manufacturer.

c. The discontinuance of the sale of the product line.

d. A change in distribution system by the predecessor manufacturer, whether through a change in distributor or the predecessor manufacturer's decision to cease conducting business through a distributor altogether.

(d) For a period of four years from the date that a successor manufacturer acquires, succeeds to, or assumes any part of the business of a predecessor manufacturer, it shall be unlawful for such successor manufacturer to enter into a same line make franchise with any person, as defined in G.S. 20-4.01(28), or to permit the relocation of any existing same line make franchise, for a line make of the predecessor manufacturer that would be located or relocated within the relevant market area of a former franchisee who owned or leased a dealership facility in that relevant market area without first offering the additional or relocated franchise to the former franchisee, or the designated successor of such former franchisee in the event the former franchisee is deceased or disabled, at no cost and without any requirements or restrictions other than those imposed generally on the manufacturer's other franchisees at that time, unless one of the following applies:

(1) As a result of the former franchisee's cancellation, termination, noncontinuance, or nonrenewal of the franchise, the predecessor manufacturer had consolidated the line make with another of its line makes for which the predecessor manufacturer had a franchisee with a then-existing dealership facility located within that relevant market area.

(2) The successor manufacturer has paid the former franchisee, or the designated successor of such former franchisee in the event the former franchisee is deceased or disabled, the fair market value of the former franchisee's franchise calculated as prescribed in G.S. 20-305(6)d.3.

(3) The successor manufacturer proves that the former franchisee, or the designated successor of such former franchisee in the event the former franchisee is deceased or disabled, by reason of lack of training, lack of prior experience, poor past performance, lack of financial ability, or poor character, is unfit to own or manage the dealership. A successor manufacturer who seeks to assert that a former franchisee is unfit to own or manage the dealership must file a petition seeking a hearing on this issue before the Commissioner and shall have the burden of proving lack of fitness at such hearing. The Commissioner shall try to conduct the hearing and render a final determination within 120 days after the manufacturer's petition has been filed. No successor dealer, other than the former franchisee, may be appointed or franchised by the successor manufacturer within the relevant market area until the Commissioner has held a hearing and rendered a determination on the issue of the fitness of the previous franchisee to own or manage the dealership.

(e) For purposes of this section, an unfair method of competition includes any physical or mechanical warranty repair made or provided directly by a manufacturer or distributor to any motor vehicle located within this State requiring the direct participation of a dealer franchised

by the manufacturer or distributor and without such dealer receiving reasonable compensation, equal to an amount no less than the amount provided in G.S. 20-305.1.

(f) No claim or cause of action may be brought against a dealer in this State arising out of any warranty repair, fix, repair, or update that was provided by the manufacturer or distributor without the direct involvement and participation of the dealer. Any manufacturer or distributor that provides or attempts to provide a warranty repair, fix, repair, update, or adjustment directly to any motor vehicle located within this State without the direct participation of a dealer franchised by the manufacturer or distributor shall fully indemnify and hold harmless any dealer located in this State for all claims, demands, judgments, damages, attorneys' fees, litigation expenses, and all other costs and expenses incurred by the dealer arising out of the actual or attempted warranty repair, fix, repair, update, or adjustment. (1973, c. 88, s. 3; 1983, c. 704, ss. 14, 15; 1999-335, s. 5; 2001-510, s. 3; 2002-72, ss. 19(d), 19(e); 2003-416, s. 11; 2009-496, s. 2; 2013-302, s. 8.)